

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

MICHAEL JAMES THOMPSON,)	
)	
Plaintiff,)	
)	
v.)	1:07CV587
)	
OFFICER JACK CATES, et al.,)	
)	
Defendants.)	

O-R-D-E-R

On August 15, 2007, in accordance with 28 U.S.C. § 636(b), the Recommendation of the United States Magistrate Judge was filed and notice was served on the parties in this action and a copy was given to the court.

Within the time limitation set forth in the statute, Plaintiff objected to the Recommendation.¹

The court has appropriately reviewed the portions of the Magistrate Judge's

¹ Plaintiff's objection asks that the court "withhold from making a ruling on Plaintiff's civil complaint until his conviction has been upheld or reversed" The court declines this course of action. The Supreme Court has said that, in a case of this nature, Plaintiff's claim is not "cognizable under § 1983 at all." *Heck v. Humphrey*, 512 U.S. 477, 483 (1994); see also *id.* at 487 ("A claim for damages bearing that relationship to a conviction or sentence that has *not* been so invalidated is not cognizable under § 1983."). In another place in the *Heck* opinion, the Court noted that a section 1983 cause of action attacking a criminal conviction that had not be overturned, etc. on appeal did not even exist. See *id.* at 489 ("We . . . deny the existence of a [§ 1983] cause of action."). For these reasons, the court denies Plaintiff's request that his case be stayed pending the outcome of his appeal in the state court. Simply put, Plaintiff has no cause of action which could be stayed.

report to which objection was made and has made a de novo determination which is in accord with the Magistrate Judge's report. The court therefore adopts the Magistrate Judge's recommendation.

IT IS THEREFORE ORDERED that Plaintiff's complaint [Pleading no. 2] be **DISMISSED** as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B). A judgment dismissing this action will be entered contemporaneously with this Order.

This the day of October 26, 2007

/s/ N. Carlton Tilley, Jr.
United States District Judge